SUPREME COURT, U.S.
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In The

Supreme Court of the United States

October Term, 1996

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BRUCE SMITH, as personal representative of Ingrid Smith, Deceased,

Petitioner,

vs.

THE SOCIALIST PEOPLE'S LIBYAN ARAB JAMAHIRIYA; LIBYAN EXTERNAL SECURITY ORGANIZATION, also known as Jamahiriya Security Organization; and LIBYAN ARAB AIRLINES,

Respondents,

ABDEL BASSET ALI AL-MEGRAHI, and LAMEN KHALIFA FHIMAH,

Defendants.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

NOTICE OF NEW LEGISLATION AND SUPPLEMENTAL MOTION TO DEFER CONSIDERATION OF PETITION

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Petitioner hereby notifies the Court that H.R. 1225, the technical corrections bill that is the subject of his Motion to Defer Consideration, was passed by the House on April 15, 1997.[1] Senate Judiciary Committee Chairman Orrin Hatch introduced a companion bill, S. 568, which passed without opposition out of the Senate Judiciary Committee on April 17, 1997. Currently, the Senate is expected to act on the House bill tomorrow, April 23, 1997. This new legislation will clarify that Petitioner has an alternative jurisdictional basis upon which to rest his suit against Respondents. Petitioner made his Motion to Defer Consideration for two reasons: First, the Court should have the benefit of this new law before it in making its decision on the Petition; and second, if the Court were to deny the Petition before the bill becomes law, such an action could create unnecessary confusion as to the status of Petitioner's ongoing lawsuit.

Upon enactment of this corrective legislation, Petitioner respectfully requests that the Court then grant his Petition for the limited purpose of remanding this case to the District Court for further proceedings consistent with the new legislation,[2] without prejudice to reassertion of subject matter jurisdiction

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[1] For relevant factual and procedural background, we refer to our three prior submissions on February 24, April 4, and April 14, 1997.

[2] See Bureau of Econ. Analysis, United States Dep't of Commerce v. Long, 454 U.S. 934 (1981) (granting petition and remanding to appellate court for further consideration in light of new statute); Dupris v. United States, 446 U.S. 980 (1980) (granting petition and remanding to district court for further consideration).

under 28 U.S.C. § 1605(a)(1) by the Petitioner in a later appeal. Such a result would foster judicial economy by avoiding piecemeal appeals, permitting this litigation to go forward on the alternative jurisdictional basis,[3] and permitting this Court to consider the jurisdictional issues raised by the Petition upon any appeal of a final decision from the District Court, if such consideration is necessary.

Alternatively, if this Court is not willing to remand the case without prejudice to consideration of the jurisdictional issues raised in the Petition in a later appeal of a final decision in this case, then Petitioner requests that this Court grant the Petition for full consideration of the jurisdictional issues raised by 28 U.S.C. § 1605(a)(1). While this new legislation provides Petitioner with an alternative jurisdictional basis for his suit against Respondents, the Petition presents important questions regarding the proper scope and construction of legislation and of a promise drafted and presented by a government which are ripe for this Court's consideration. Further, since there are limitations imposed on the exercise of the § 1605(a)(7) waiver not present under (a)(1) and since Libya plans to challenge the constitutionality of (a)(7), the issues here presented are still vital to Petitioner

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[3] Following the enactment of § 1605(a)(7), other families of the victims of the bombing of Pan Am 103 brought civil lawsuits against the Respondents and Al-Megrahi and Fhimah. See, e.g., Cummock, et al., v. The Socialist People's Libyan Arab Jamahiriya, et al., 96-CV-2993 (TCP) (E.D.N.Y.). If remanded, Petitioner's case can proceed on the same track as these other pending cases.

and may well have a bearing on the successful prosecution of his case.

If this Court is not willing to remand the case without prejudice to later consideration of the jurisdictional issues raised in the Petition and the Court is not willing to grant the Petition for full consideration, Petitioner respectfully requests that the Court remand the case for further proceedings consistent with the new jurisdictional basis provided to Petitioner by the recent legislation.

Respectfully submitted,

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Dated: April 22, 1997

CERTIFICATE OF SERVICE

I certify that on this 22nd day of April I caused a copy of the foregoing Notice of New Legislation and Supplemental Motion to Defer Consideration of Petition to be served via Federal Express upon the following counsel for Respondents:

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